IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO Nos.608/03, 609/03, 606/03,611/03, 554/03, 605/03, 557/03 & 560/03,

Date of Decision : 17th July, 2006

13

THE ORIENTAL INSURANCE CO. LTD. .... Appellant.
Through Mr. Rajiv Khosla, Advocate.

Versus

SHRI JAGAN NATH & ORS..... Respondents in FAO No. 611/2003.
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

FAO No. 611/2003

See detailed order in FAO No.608/2003.

(SANJIV KHANNA)
JUDGE

July 17th, 2006
dk/vkr/P.

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IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO Nos.608/03, 609/03, 606/03,611/03, 554/03, 605/03, 557/03 & 560/03,

Date of Decision : 17th July, 2006

THE ORIENTAL INSURANCE CO. LTD. .... Appellant.
Through Mr. Rajiv Khosla, Advocate.

Versus

SMT. DURGESH & ORS. .... Respondents in FAO No. 608/2003.
SMT. KAPOORI DEVI & ORS.... Respondents in FAO No. 609/2003.
SHRI RAM BALAK & ORS. ..... Respondents in FAO No. 606/2003.
SHRI JAGAN NATH & ORS..... Respondents in FAO No. 611/2003.
SHRI ASHOK KUMAR & ORS.... Respondents in FAO No. 554/2003.
SH. RAJINDER BHARTI & ORS. Respondents in FAO No. 605/2003.
SMT. SHIV KUMARI & ORS. ... Respondents in FAO No. 557/2003.
SHRI MANOJ & ORS. .... Respondents in FAO No. 560/2003.

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes.

(13)

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO Nos.608/03, 609/03, 606/03,611/03, 554/03, 605/03, 557/03 & 560/03,

Date of Decision : 17th July, 2006

THE ORIENTAL INSURANCE CO. LTD. .... Appellant.
Through Mr. Rajiv Khosla, Advocate.

Versus

SMT. SHIV KUMARI & ORS. ... Respondents in FAO No. 557/2003.
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

FAO No. 557/2003

See detailed order in FAO No.608/2003.

(SANJIV KHANNA)
JUDGE

July 17th, 2006
dk/vkr/P.

SANJIV KHANNA, J. :

CM No.1139/2003 and other Cms(Condonation of Delay)

There is delay of about 38 days in filing of the appeals by the applicant insurance company against the award of Motor Accidents Claim Tribunal dated 31.3.2004. It is stated in the application that the insurance company was belatedly informed by its counsel about the impugned award. Respondents have not filed any reply to the said application and keeping in view the averments made in the application, the same is allowed. The delay in filing of the appeal is condoned.

FAO Nos.608/03, 609/03, 606/03, 611/03, 554/03 605/03, 557/03 & 560/03

1. These 8 appeals have been filed by the Oriental Insurance Company Limited, the appellant, challenging and questioning the award dated 31.3.2003 passed by Motor Accidents Claim Tribunal. By the impugned award learned Motor Accidents Claim Tribunal has held that the appellant insurance company was jointly and severally liable along with the owner and the driver of the offending vehicle to pay compensation to the claimants-respondents under the Motor Vehicles Act, 1988 (hereinafter referred to as the Act). Learned Tribunal has, inter alia, held that though the deceased/injured were travelling in a goods vehicle, the insurance company was liable to pay compensation under Section 147 of the Act as amended by the Amendment Act, 1994. It has

held that the legislative mandate had been explained in the case of New India Insurance Company Vs. Satpal, AIR 2000 SC 235 and in view of the said judgment the defence of the Insurance Company that it was not liable to pay compensation under the Insurance Policy to the claimants-respondents was liable to be rejected.

2. As the issues and the questions involved in all the appeals are similar, I propose to dispose of these 8 appeals by this common order. The details of these appeals amount awarded etc. are as under:-

S. NO.	Appeal Number	Name of the Deceased	Age	Claimant's relationship with the Deceased/ Injured	Date of filing the Claim	Date of the Decision	Amount awarded as Pecuniary Damages (Loss of Dependency + Funeral Last Rites) in Rs. {A}	Amount awarded as non-Pecuniary Damages (Loss of Love and Affection) in Rs.{B}	Total Compensation in Rs.
1.	FAO 554/03	Ashok Kumar	-	Himself	20-1-97	31-3-03	10,000	-	10,000
2.	FAO 560/03	Manoj	-	Himself	-do-	-do-	25,000	-	25,000
3.	FAO 557/03	Krishan Kumar Bharti	40	Wife & Children (Minor through mother)	19-12-96	-do-	2,88,500	10,000	2,98,500
4.	FAO 605/03	Dhanesh Bharti (unmarried)	21	Parents	-do-	-do-	1,05,800	10,000	1,15,800
5.	FAO 608/03	Naval Kishore	22	Wife & parents	-do-	-do-	2,46,488	10,000	2,56,488
6.	FAO 606/03	Ram Balak	-	Himself	20-1-97	-do-	25,000	-	25,000
7.	FAO 609/03	Ram Kishan	50	Wife & Children	23-12-96	-do-	1,15,616	10,000	1,25,616
8.	FAO 611/03	Gajendra Singh (Unmarried)	19	Parents	10-4-97	-do-			2,48,072

Note: The Rate of interest was fixed at 9% in all the above cases.

3. The facts are not disputed and the relevant facts in brief are reproduced below.

4. The claimants-respondents are dependents/legal heirs of the deceased or the injured who were travelling in a goods carrier, i.e., a tempo bearing registration No. DL1LA 9264 on 21.10.1996. They were returning back after performing puja in the river Yamuna. The said tempo overturned and several persons lost their lives or were injured. In case of death, the claimants being the dependents/legal heirs had filed their claim petitions before the Motor Accidents Claim Tribunal and in case of injuries, the injured had filed claim petitions seeking compensation.

5. The appellant insurance company was also made party to the said claim petitions. The defence of the insurance company was that it was not liable to pay compensation in view of Section 147 of the Act. This defence as already been stated above, was considered but not accepted by the learned Tribunal.

6. I have heard the learned counsel for the appellant in these appeals. The respondents in spite of service have not appeared in the matter.

7. Section 147 of the Act has been considered and examined by the

Supreme Court in several cases. The said section after amendment in 1994 reads as under:-

> "147. **Requirements of policies and limits of liability** :-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which
>
> (a) is issued by a person who is an authorised insurer; or
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;
>
> Provided that a policy shall not be required-
>
> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-
>
> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle engaged as conductor of the vehicle

or in examining tickets on the vehicle, or

(c) if it is a good carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

8. The Supreme Court in the case of National Insurance Company Ltd. Vs. Baljit Kaur & Ors., I (2004) ACC 259 (SC) examined the amended provision in light of the legislative history and earlier decisions of the Supreme Court in the case of Satpal (supra) and New India Insurance Company Ltd. Vs. Asha Rani, (2003) 2 SCC 223, which was followed in the case of Oriental Insurance Company Ltd. Vs. D.K.T. Reddy, 2003 (2) SCC 339. After examining these decisions and applying Heydon's Rule it was, inter alia, held as under:-

> "16. By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.
>
> 17. The observations made in this connection by the Court in Asha Rani case (supra), to which one of us,

Sinha, J., was a party, however, bear repetition:

> "26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicles insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore."

18. In Asha Rani (supra), it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise."

9. Reference in this regard can also be made to the decision of the Supreme Court in the case of National Insurance Company Ltd. Vs. Ajit Kumar, III (2003) ACC 277. In this case it was again held that Section 147 of the Act evinces that carrying of passengers in a goods carriage is not contemplated under the Act. The dictum in Baljit Kaur case (supra)

was reiterated by the Supreme Court in the case of Oriental Insurance Company Ltd. Vs. Nanjappa and Ors., I (2004) ACC 524.

10. Subsequently, Supreme Court in National Insurance Company Ltd. Vs. Bomithi Subbhayamma & Ors., III (2005) DMC 423 (SC) has held that the liability under Section 147(1)(b)(i) is that of the owner of the vehicle in case of death or bodily injury to any person or damage to property of a third party caused by or arising out of use of a vehicle in a public place and owner of the vehicle must pay premium for covering the risk of passengers travelling in vehicle. Even after the 1994 amendment only the owners of the goods and its authorised representatives were/are covered by the policy of insurance issued for a goods vehicle but the intention of the legislature was/is not to make the insurance company liable in case of gratuitous passengers or passengers (other than the owner of the goods and his authorised representative) travelling in a goods vehicle.

11. Recently, in National Insurance co. Ltd. Vs. Swaroopa and Ors. 2006 AIR SCW 3227, the Supreme Court has held that insurance company will not be liable to pay compensation to a gratuitous passenger in a goods vehicle, if the vehicle meets with an accident.

12. In view of the above discussion, I allow the present appeal. It is held that the insurance company is not liable under Section 147 of the Act to pay compensation to the claimants. There is no other material and

evidence to show that the appellant insurance company was otherwise liable under the insurance policy to pay compensation to passengers or others, save the statutory liability under the Act. It is however clarified that the award and obligation of the owner and the driver is not being disturbed. The respondent- claimants are at liberty to execute the award against the driver and the owner. In case the appellant has already made payment of the compensation to the claimants-respondents as fixed by the Tribunal, it shall be entitled to recover the said amount from the owner of the vehicle in terms of Section 168 of the Act. The appeals are accordingly allowed with the above direction. No costs.

(SANJIV KHANNA)
JUDGE

July 17th, 2006
dk/vkr/P.